

Attachment 1

ADDENDUM TO APPENDIX B-3 STANDARD TERMS AND CONDITIONS

- **Appendix B-3 is modified to delete Clause 2 and replace it with the following:**

Clause 2. SUBCONTRACT ISSUES AND DISPUTES (SEPT 2007)

(Applies to all subcontracts.)

- A. It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
- B. The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 1. Subject to paragraph (B)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- C. Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- D. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.

- E. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- F. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

- **Appendix B-3 is modified to delete Clause 3 and replace it with the following:**

**CLAUSE 3 – SECURITY, SAFETY, AND ACCESS REQUIREMENTS FOR
SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL)
(JANUARY 2007)**

(Applies to all subcontracts where Subcontractor's employees (or lower-tier subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or-leased property.)

A. Security and safety requirements.

1. NREL has established security and safety requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.

The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or-leased property is closed to all hunting.

2. As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
3. The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.

4. The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost time accidents and ambulance runs, occurring under this subcontract.
5. NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.

B. Access requirements for U.S. citizens.

1. Access to NREL operated facilities is controlled in accordance with the DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.

C. Access requirements for persons who are not U.S. citizens.

1. The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier subcontractors' employees) and their officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.
2. Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a Federal background check. This process requires a minimum of two weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will be processed for an extensive Federal background check and DOE Headquarters approval. This process requires a minimum of three months. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."

It is the responsibility of the NREL Technical Monitor and the NREL Subcontract Administrator to assure that the Subcontractor provides all documentation and meets all requirements within the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

3. Prior to the initiation of subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service.

Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.

4. After the Subcontractor (and its lower-tier subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

D. Access Requirements for all persons.

1. All persons entering NREL operated facilities must display a valid NREL (or DOE) issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.
2. The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities are controlled on a 24-hour, 7-day per week basis.
3. The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

- E. The Subcontractor shall include this clause, including this Paragraph (E), in all lower-tier subcontracts that require entry onto NREL operated facilities.”

• **Appendix B-3, Clause 58 is modified as follows:**

CLAUSE 58. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) AND (ALTERNATE I) (DEC 2002) AND (ALTERNATE II) (DEC 2000) Derived from DEAR 970.5232-3 (FD) is modified to add “(SPECIAL) (FEB 2006)” to the title of the clause and add the following paragraph at the end of the clause, appropriately identified as Paragraph I when (i) the clause with no Alternate is applicable and (ii) Alternate I is applicable. Appropriately identified as Paragraph J when Alternate II is applicable.

- “(*). Statement of Cost Incurred and Claimed. At any time during subcontract performance, should the NREL Subcontract Administrator determine that the costs incurred are unallowable to an extent to cause a loss of confidence in the Subcontractor's management

controls or the Subcontractor's management systems that validate the costs incurred and claimed, the NREL Subcontract Administrator may, in his or her sole discretion, impose conditions upon the Subcontractor including direction that specific types of cost be claimed by periodic vouchering. In addition, the NREL Subcontract Administrator may direct the Subcontractor to pay the NREL an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided in this subcontract, at law, or in equity. This action shall not relieve the Subcontractor from any obligation to perform its obligations under this subcontract."

- **Appendix B-3 is modified to add the following Clauses:**

CLAUSE 59. RESEARCH MISCONDUCT (JUL 2005)

Derived from DEAR 952.235-71 (FD)

(Applies to all subcontracts where the Subcontractor will propose, perform, or review research of any kind.)

- A. The Subcontractor is responsible for maintaining the integrity of research performed pursuant to this subcontract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.
- B. Unless otherwise instructed by the NREL Subcontract Administrator, the Subcontractor must conduct an initial inquiry into any allegation of research misconduct. If the Subcontractor determines that there is sufficient evidence to proceed to an investigation, it must notify the NREL Subcontract Administrator and, unless otherwise instructed, the Subcontractor must:
 1. Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;
 2. If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
 3. Inform the NREL Subcontract Administrator if an initial inquiry supports a formal investigation and, if requested by the NREL Subcontract Administrator thereafter, keep the NREL Subcontract Administrator informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the subcontractor will forward to the NREL Subcontract Administrator a copy of the evidentiary record, the investigative report, any recommendations made to the Subcontractor's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

- C. NREL/DOE may elect to act in lieu of the Subcontractor in conducting an inquiry or investigation into an allegation of research misconduct if the NREL Subcontract Administrator finds that:
1. The research organization is not prepared to handle the allegation in a manner consistent with this clause;
 2. The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;
 3. NREL/DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,
 4. The allegation involves possible criminal misconduct.
- D. In conducting the activities under paragraphs B and C of this clause, the Subcontractor and NREL, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
1. **Safeguards for information and subjects of allegations.** The Subcontractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Subcontractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Subcontractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.
 2. **Objectivity and Expertise.** The Subcontractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct that have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.
 3. **Timeliness.** The Subcontractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.
 4. **Confidentiality.** To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about

the identity of the subjects of allegations and informants should be limited to those with a need to know.

5. Remediation and Sanction. If the Subcontractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Subcontractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Subcontractor must coordinate remedial actions with the NREL Subcontract Administrator. The Subcontractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

- E. NREL/DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Subcontractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If NREL/DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

F. Definitions.

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

- G. By executing this subcontract, the Subcontractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.
- H. The Subcontractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.”

CLAUSE 60. Drug-Free Workplace (MAY 2001)

Derived from FAR 52-223-6 (FD)

(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or –leased property.)

- A. Definitions. As used in this clause –

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 -- 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. “Directly engaged” is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.

“Individual” means a Subcontractor that has no more than one employee including the Subcontractor.

- B. The Subcontractor, if other than an individual, shall -- within 30 days after award (unless a longer period is agreed to in writing for subcontracts of 30 days or more performance duration), or as soon as possible for subcontracts of less than 30 days performance duration –

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 2. Establish an ongoing drug-free awareness program to inform such employees about --
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Subcontractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 3. Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph B (1) of this clause;
 4. Notify such employees in writing in the statement required by subparagraph B (1) of this clause that, as a condition of continued employment on this Subcontract, the employee will --
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 5. Notify the NREL Subcontract Administrator in writing within 10 days after receiving notice under subdivision B(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 6. Within 30 days after receiving notice under subdivision B (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 7. Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs B (1) through B (6) of this clause.
- C. The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.

- D. In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph B or C of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."